

Message Text

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PAGE 01 STATE 215224
ORIGIN L-03

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TO AMEMBASSY BONN IMMEDIATE

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E.O. 11652: N/A

TAGS: EAIR, GW, US

SUBJECT: PAN AM IGS CLAIM

REF: BONN 14593

1. AS REQUESTED REFTEL, DEPARTMENT OFFERS FOLLOWING
TALKING POINTS ON TWO MAIN ISSUES INVOLVED IN DISCUSSION
OF PAN AM IGS CLAIM, RECIPROCITY UNDER US LAW AND THE
EFFECT OF THE GERMAN COMMITMENT UNDER THE BONN/PARIS
CONVENTIONS TO FACILITATE BERLIN AIR TRAFFIC. SHORT NOTICE
AND ABSENCE FROM DEPARTMENT OF INVOLVED OFFICERS MAKES
FULLER EXPOSITION OF US POSITION IMPOSSIBLE AT THIS TIME.

2. RECIPROCITY. -

A. AS NOTED IN ORIGINAL USG MEMO, GERMAN CITIZENS AND US
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PAGE 02 STATE 215224

CITIZENS HAVE EQUAL ACCESS TO US COURTS IN SEEKING DAMAGES
FOR WRONGFUL USG ACTIONS UNDER FEDERAL TORT CLAIMS ACT.

B. ON SEVERAL OCCASIONS USG HAS BEEN FOUND LIABLE FOR
DEFAULTS OF ITS AIR CONTROLLERS UNDER TORT CLAIMS ACT.

C. GERMAN RECIPROCITY DETERMINATIONS ARE STATED IN GENERAL

TERMS, E.G., THE NETHERLANDS HAS BEEN FOUND TO RECIPROCATATE.
THUS PRECISE IDENTITY OF OUTCOME DOESN'T SEEM TO BE REQUIR-
ED.

D. BECAUSE PAN AM IS DENIED RECOVERY AFFORDED GERMAN CLAI-
MANTS IN SPITE OF FACT THAT US APPEARS TO SATISFY RECIPRO-
CITY REQUIREMENT, PAN AM IS PLACED IN AN INFERIOR POSITION
VIS-A-VIS GERMANS.

E. FYI: DEPARTMENT BELIEVES THIS SUGGESTION OF DISCRIMIN-
ATION MAY BE MORE PERSUASIVE THAN IDEA OF EXCEPTIONAL
PRIVILEGE FOR PAN AM BASED ON TREATY. RULING OF THE
GERMAN SUPREME COURT IN CAPITOL AIRWAYS CASE THAT FORMALLY
PUBLISHED NOTIFICATION OF RECIPROCITY IS REQUIRED MAY BE
CITED BY FRG AS BAR TO RECOVERY. WHILE WE REGRET THAT
DECISION, WE ARE ATTEMPTING TO EFFECT AN INFORMAL SETTLE-
MENT BASED ON PRINCIPLE OF EQUALITY OF TREATMENT BETWEEN
US AND GERMAN CITIZENS, PLUS FORCE OF FRG TREATY COMMIT-
MENT TO ASSIST AIR TRAFFIC. THUS ABSENCE OF FORMAL NOTI-
FICATION SHOULD NOT FORECLOSE PAN AM'S RECOVERY.

3. BONN/PARIS TREATY.

A. SUGGESTION OF DISCRIMINATION ALSO EXISTS HERE, IN
STATEMENT IN USG MEMO THAT WHATEVER STANDARD OF RESPONSI-
BILITY TO FACILITATE AIR TRAFFIC TREATY INVOLVES, IT MUST
BE AT LEAST AS HIGH AS STANDARD OWED TO GERMAN NATIONALS
UNDER GERMAN LAW.
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PAGE 03 STATE 215224

B. JUNE 16 RULING BY FEDERAL SUPREME COURT IN NECKERMAN
CASE WOULD APPEAR TO SATISFY NEED OF FRG OFFICIALS FOR
FINAL DETERMINATION OF WHAT STANDARD WAS OWED TO GERMAN
CLAIMANTS IN THIS SITUATION.

C. WITHOUT DEFINING PRECISELY THE GERMAN TREATY COMMITMENT
TO FACILITATE UNIMPEDED AIR TRAFFIC, WE REITERATE POINT
MADE IN USG MEMO THAT TREATY AND PAN AM'S IMPORTANT ROLE
IN IMPLEMENTING IT STRENGTHEN PAN AM'S CLAIM. VANCE

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